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July 25, 2022

Via email submission

Judge John R. Adams  
 John F. Seiberling Federal Building and U.S. Courthouse  
 Two South Main Street, Room 510  
 Akron, Ohio 44308-1813

**In Re: Miller v. Anderson et al., Case No. 5:20-cv-01743-JRA**

Dear Judge Adams,

Pursuant to this Court's July 13 Order ("Order"), the undersigned counsel submit this request to become substitute plaintiffs' counsel in the captioned action. Each of the undersigned firms have significant experience investigating and prosecuting shareholder derivative actions and complex litigation. Moreover, each of the undersigned firms is based in and regularly practice in the State of Ohio and the Northern and Southern Districts of Ohio.

We understand this case to present an unusual situation where it appears that the parties (Plaintiff, Defendant and Intervenors) cooperated seeking to circumvent the Court's responsibilities under Fed.R. 23.1. This is unfortunately familiar to one of the undersigned attorneys who recently experienced nearly identical conduct: a team of Plaintiff's lawyers with full cooperation of Defendant who sought to evade the first-filed Court (Judge Nugent), to avoid the concerns raised about the manner the case was handled, and the propriety of a proposed settlement. The similarities with the present case are striking: non-existent depositions of any Defendant or witness; lack of sworn testimony from any defendant; on-record and repeated concerns by judges about the lack of discovery, investigation or verification to support a settlement; and, most important, response to the foregoing by the parties working to take the settlement (and evaluation of its sufficiency) from the judge longest presiding over the matter (Donald C. Nugent).

Like other matters in which the undersigned attorneys have been involved, this Court's invitation for substitute counsel requires counsel well-staffed and experienced with the type of work required in this matter: Obtain proper and complete discovery; insure all key materials are produced, with 'privilege' appropriately curtailed; conduct prompt, thorough depositions of material witnesses;

insure that the responsible Defendants are held accountable for their misconduct; and provide a sufficient record to support a finding that the settlement is fair, reasonable and adequate based.

The Complaint makes it clear that the purpose of the lawsuit was to hold the responsible Defendants accountable:

5. In this derivative action, Plaintiff, a shareholder of FirstEnergy stock since 1999, seeks to hold accountable the directors and officers whose actions caused and/or permitted the wrongdoing that the Company has engaged in.

That purpose was not based on speculation. The named Defendants engaged in their conduct for self-benefit which resulted in direct financial gain to each of them:

83. All Director Defendants are directors, and their self-dealing as alleged herein resulted in direct financial gains to Defendants from the challenged transactions and actions as alleged herein, making it a substantial likelihood that each of the Director Defendants named herein.

The Complaint clearly alleges how and to what extent Defendants enriched themselves through their improper conduct. A significant question therefore is the propriety of a resolution allowing no liability or disgorgement from any Defendant. A full investigation and review of Defendants' conduct is indispensable before any settlement is presented to or considered by the Court.

The task for substitute counsel has been articulated by the Court: establish the factual record showing the "allocation of damages amongst the defendants and the factual basis used to establish such allocation." This raises the following related questions identified by this Court: which defendants gave or received bribes, especially as detailed in the DPA; what claw-back requirements are being imposed on defendants (or a clear explanation why not); a record of the conclusions reached by the Special Litigation Committee, which have not been revealed to this Court; and quantification of the financial impact from this misconduct, without which the 'reasonableness' of any settlement is not possible.

Attached to this application are the resumes of the undersigned firms. These resumes reflect the substantial experience of counsel in prosecuting shareholder derivative and complex litigation. As reflected in the attached resumes, Dworken & Bernstein Co., L.P.A. is a Rule 23 class action specialist, particularly in cases involving extensive document production, and apex corporate depositions; Messrs. Kennedy and Goetz have undertaken some of the most significant complex litigation matters and are currently working directly in the massive discovery in the opioid MDL litigation before Judge Polster; and Messrs. Wayne and Sparks have represented shareholders for decades in shareholder derivative actions<sup>1</sup> throughout the country.

Finally, the attorneys seeking to evade this court are for the most part not practitioners in this district. They are from out-of-state. In comparison, the undersigned and all other attorneys and

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<sup>1</sup> Messrs. Wayne and Sparks were initially local counsel for Saxena White in the action pending in the Southern District of Ohio. However, they did not seek and were not included in that Court's appointment of Lead Counsel and were not counsel on the Consolidated Amended Complaint. Messrs. Wayne and Sparks had no involvement in the settlement proposed in the Southern District.

firms in the present application are resident in Ohio. Each of the applicants regularly practice in this district. We believe it is important for the Court to have the confidence that the conduct of the attorneys before it will not only be governed by law and court rules, but also by the knowledge that they will again appear before this same Court, and other judges in this district, and will be known for their actions.

The undersigned firms and attorneys respectfully submit this application pursuant to this Court's Order and are available to answer all questions of the Court.

Very Respectfully Submitted,

*/s/ Patrick J. Perotti*

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## Weisman, Kennedy & Berris Co., L.P.A.

Weisman, Kennedy & Berris Co., L.P.A. ("Weisman Kennedy") has been exclusively devoted to litigation since its founding in 1963. The firm concentrates in litigation dealing with mass torts, insurance, commercial, product liability and personal injury as a result of automobile negligence and medical malpractice. For over twenty-five years, the firm has directed considerable resources to class action litigation.

Weisman Kennedy has represented over 25,000 individuals before Federal and State courts throughout the United States. In addition to its local representation of individual clients, in the 1990s the firm emerged as a leader in the class action and national mass tort arena.

Weisman Kennedy has had notable involvement, usually as lead counsel, co-lead counsel, or liaison counsel in over 50 class actions or mass tort cases. For example, Weisman Kennedy held a leadership role in the Breast Implant Litigation, MDL-926 where the firm was a member of the Settlement Advisory Committee, as well as the State Liaison Counsel for Ohio, and First Chair in the depositions of employees from Dow Corning, Koken and Porex. The firm devoted over twelve thousand (12,000) hours of lawyer, paralegal and nursing time to discovery efforts.

Weisman Kennedy acted as Class Co-Counsel and Liaison Counsel in the In re: Inter-op Hip Prosthesis Product Liability Litigation, MDL-1401 overseeing the interests and rights of approximately 3,000 class members in the \$1 Billion Settlement. Weisman Kennedy was subclass counsel in the \$4.5 Billion Settlement in the In re: Diet Drug (Phentermine/Fenfluramine/ Dexfenfluramine) Products Liability Litigation, MDL-1203.

In the In re: Telectronics Pacing Systems litigation, Weisman Kennedy was one of the law firms appointed by the Federal District Court to provide a leadership role on behalf of thousands of consumers who had received faulty pacemakers. The pacemakers had a poorly designed lead wire that, if left implanted in the atrium of the heart, could fracture and lead to severe injury or even death. Weisman Kennedy took the lead role in a Summary Jury Trial before a jury in Federal Court in Cincinnati, Ohio. This Summary Jury Trial was used by Senior District Judge Spiegel in an attempt to resolve the case. The summary jury found in favor of the plaintiffs and awarded Two Hundred Sixty-eight million dollars (\$268,000,000.00) in damages. In his order written at the conclusion of the Summary Jury Trial, Judge Spiegel stated:

.... In litigating this case, Class and Plaintiffs' Counsel expended significant resources of both time and monies. Counsel employed expert witnesses and conducted extensive discovery . . . We believe that, without such a class action, small individual claimants would lack the resources to litigate a case of this magnitude. Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling such small claimants to pool their claims and resources.

....We find that the professional skill and standing of all Counsel involved on behalf of the class was highly commendable, professional and was prosecuted with a great deal of skill,

This case represents hard-fought litigation, and, in the beginning, a settlement of this magnitude appeared almost inconceivable. Class Counsel . . . demonstrated their professionalism and skill . . . aware of the strengths and weaknesses of their case....

Recognizing the extensive amount of time, services and skill . . . Plaintiffs' Counsel . . . expended in this case, the Court concludes that the reputations of all of the Counsel in this action are well earned and deserved.

Due to the success Weisman Kennedy experienced as counsel for Plaintiffs in numerous noteworthy proceedings, Weisman Kennedy has also served as defense counsel in multiple class

actions and served as co-lead counsel and trial counsel for the Defendant group in the In re: Welding Fume Litigation, (MDL 1535) which involved claims by over 10,000 welders against over fifty (50) defendants due to alleged injuries from welding rods.

Weisman Kennedy served in leadership in the In re: DePuy ASR Hip Implant Products Liability Litigation, (MDL 2197) and it did the majority of the important liability discovery in the MDL. Weisman Kennedy was also selected as lead trial counsel for the first Federal bellwether case and the global DePuy ASR settlement was achieved within only weeks before the start of the trial. Weisman Kennedy was heavily involved in negotiating the settlement and took the lead in drafting and helping to administering the orderly resolution of the thousands of claims. Additionally, Weisman Kennedy held a leadership role in the In re: Stryker Rejuvenate and ABG-II Hip Implants Products Liability Litigation, (MDL 2441). The Rejuvenate litigation settled quickly but Weisman Kennedy did all of the liability discovery and, again, was heavily involved in negotiating and helping to administer the settlement.

Currently, Weisman Kennedy is serving on the Plaintiffs' Executive Committee in the In re: National Prescription Opiate Litigation, (MDL 2804). As part of this appointment, Weisman Kennedy has taken the lead in the liability discovery against one of the pharmacy defendants and has also heavily participated in the liability discovery against one of the distributor defendants. Additionally, Weisman Kennedy is serving as a consultant to the Trustee of the Fire Victims Trust in the \$13 billion dollar PG&E settlement for the California wildfires.

Examples of mass tort/class action/derivative cases of significant involvement include:

- Straus v. Critelli, et al., Cuyahoga County Court of Common Pleas Case No. CV-11-748467 (Derivative action on behalf of Eaton Corporation claiming that certain officers, employees, and directors of the Company breached their fiduciary duties in connection with a Mississippi state-court litigation when it secretly retained a lawyer to improperly influence the Judge. *Eaton Corp., et al. v. Jeffrey D. Frisby, et al.*, Circuit Court of Hinds County, Mississippi Case No. 251-04-642. Upon discovery, Eaton, the plaintiff in the case was sanctioned by dismissal of the Mississippi action.)
- In re: Silicone Gel Breast Implant Products Liability Litigation, (MDL No. 926).
- In re: Air Disaster at New York LaGuardia Airport on March 22, 1992, (MDL No. 936).
- In re: Orthopedic Bone Screws Products Liability Litigation, (MDL 1014)
- In re: Electronics (cardiac monitoring leads) Pacing Systems, Inc., (MDL No. 1057).
- In re: Diet Drugs (Phentermine / Fenfluramine / Dexfenfluramine) Products Liability Litigation, (MDL No. 1203).
- In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation, (MDL No. 1401).
- In re: Welding Fume Litigation, (MDL 1535).
- In re: DePuy ASR Hip Implant Products Liability Litigation, (MDL 2197).
- In re: Stryker Rejuvenate and ABG-II Hip Implants Products Liability Litigation, (MDL 2441).
- In re: National Prescription Opiate Litigation, (MDL 2804).
- In re: Phar-Mor, Inc. Securities Litigation.
- James Wojtkiewicz v. Blue Cross and Blue Shield Mutual of Ohio; Marlene Misch v. Community Mutual Insurance Company.
- In re: Valence Technology Securities Litigation.
- In re: Royal Appliance Securities Litigation.
- In re: Valley Systems Securities Litigation.
- In Re: Figgie International, Inc. Securities Litigation.
- Goldy v. Auto Owners Insurance Company, et al. (Insurance class action).

- In re: Gliatech Inc. Securities Litigation.
- Sherma v. Cole National Corp. et al. (Securities class action).
- In re: First Energy Securities Litigation.
- Kline v. The Progressive Corporation, et al. (Insurance class action).
- Wright v. Travelers Property Casualty Ins. Co. of Illinois, et al. (Insurance class action).
- Rudean Ellens v. Genworth Life and Annuity Ins. Co. (Insurance class action).
- David Middleton v. Genworth Life and Annuity Ins. Co. (Insurance class action).
- Dana McGill v. Parker Centennial Assurance Co. (Insurance class action).
- Hyrnak v. Mid-West National Life Insurance Co. of Tennessee (Insurance class action).
- Hardy v. Minnesota Life Insurance Co. (Insurance class action).
- Townsend v. Protective Life Insurance Co. (Insurance class action).
- Lonardo v. Travelers Indemnity Co. (Insurance class action).



## STRAUSS TROY

Strauss Troy is a general business, commercial law, and dispute resolution law firm providing service from its Ohio and Covington, Kentucky offices to businesses and individuals throughout the mid-west. The firm's Complex Litigation Practice Group has a long history of aggressive and creative advocacy for individual shareholders, as well as public and private corporations, financial institutions and other professionals in complex single party and class action litigation involving state and federal securities laws, officer and director fiduciary law, antitrust, consumer, product liability and other difficult class action claims in state and federal courts across the country. The firm's reputation for excellence has been recognized on repeated occasions by courts that have appointed its attorneys to major positions in complex class, multi-district or other consolidated actions. More information about Strauss Troy is available on the firm's website: [www.strausstroy.com](http://www.strausstroy.com).

Richard S. Wayne, Co-Chair of Strauss Troy's Litigation Department, has served, or is presently acting as lead attorney, co-lead counsel, class counsel or plaintiff's trial counsel, in numerous class action and derivative actions in state and federal jurisdictions throughout the country. Some of these actions include:

### **Federal Securities Law Class Action Litigation**

- *Ohio Public Employees Retirement System vs. Federal Home Loan Mortgage Corporation, et al.*  
No. 4:08-cv-160 (N.D. Ohio)
- *John Capannari, et al. v. Glen Galemmo, et al.*  
No. 1:13-cv-883 (S.D. Ohio)
- *Brian Molnar v. Green Bankshares, Inc., et al.*  
No. 2:11-cv-00014 (E.D. Tennessee)
- *In re AtriCure, Inc. Securities Litigation*  
No. 1:08-cv-00867 (S.D. Ohio)
- *Argent Classic Convertible Arbitrage Fund, Ltd. v. National City Corporation, et al.*  
No. 1:08-nc-70016 (N.D. Ohio)
- *In Re Humana, Inc. Securities Litigation*  
No. 3:08-CV-0162 (W.D. Kentucky)

- *Jack Merzin v. Provident Financial Group, Inc.*  
No. C-1-03-165 (S.D. Ohio)
- *In re Broadwing Securities Litigation*  
No. C-1-02-795 (S.D. Ohio)
- *In re Procter & Gamble Company Securities Litigation*  
No. C-1-00-CV-190 (S.D. Ohio)
- *Fidel vs. AK Steel Holding Corp.*  
No. C-1-00-320 (S.D. Ohio)
- *In Re Smartalk Teleservices Inc. Securities Litigation*  
MDL No. 00-1315 (S.D. Ohio)
- *Woodward v. Great American Life Insurance Company*  
No. A-99-00587 (Hamilton Co., Ohio)
- *In Re Premiere Technologies, Inc. Securities Litigation*  
No. 1:98-CV-1804 (N.D. Georgia)
- *In Re: Corrpro Companies, Inc. Securities Litigation*  
No. 5:95CV1223 (N.D. Ohio)
- *In Re: Cincinnati Microwave, Inc. Securities Litigation*  
Master File No. C-1-95-905 (S.D. Ohio)
- *In re American Premier Underwriters, Inc. Securities Litigation*  
No. A-94-06195 (Hamilton Co., Ohio)
- *In re Structural Dynamics Research Corporation Securities Litigation*  
No. C-1-94-630 (S.D. Ohio)
- *In Re: Roberds Litigation*  
No. C-3-94-86 (S.D. Ohio)
- *Brown v. Chiquita Brands International, Inc.*  
Master File No. C-1-92-366 (S.D. Ohio)
- *In re Nord Resources Corporation Securities Litigation*  
Master File No. C-3-900380 (S.D. Ohio)

- *In Re: Eagle-Picher Industries, Inc. Securities Litigation*  
Master File No. C-1-88-936 (S.D. Ohio)
- *Lancz Associates, Inc. v. Sithe Energies, L.P., et al.*  
No. 9566 (Del. Chancery 1988)
- *In re Gulf States Utilities Securities Litigation*  
No. B-86-574 (E.D. Texas)
- *In re Middle South Utilities Securities Litigation*  
No. 85-3681 (E.D. Louisiana)
- *Lockspeiser v. Western Maryland Company, et al.*  
No. H-13-117 (N.D. Maryland)
- *Lockspeiser v. The Bibb Company, et al.*  
No. 1-85-CV-4035 (N.D. Georgia)
- *Menowitz, et al. v. NCR Corporation, et al.*  
[1990-91 Transfer Binder] Fed.Sec.L.Rep. ¶95,866 (CCH) (S.D. Ohio 1991)
- *Howing Co., Inc. v. Nationwide Corporation*  
No. C-1-83-1693 (S.D. Ohio)

### **Shareholder Derivative and Investor Claims**

- *In re the Wendy's Company Shareholder Derivative Action*  
Case No. 1:16-cv-1153-TSB, (U.S. District Court – S.D. Ohio)
- *Steven A. Ettinger Inc. Profit Sharing Plan v. Richard J. Kramer, et al.*  
CV-2018-10-4432 (Summit Co., Ohio)
- *Colleen Witmer v. Phyllis Yale, et al.*  
No. 16-CI-001246 (Jefferson Circuit Court, Kentucky)
- *Robert W. Black v. Cincinnati Financial Corporation, et al.*  
No. 1:11-CV-210 (U.S. District Court – S.D. Ohio)
- *Franklin, Plotnick & Carl, Inc. Profit Sharing Plan v. Michael J. Critelli, et al.*  
Case No. CV 11 748467 (Cuyahoga Co., Ohio)
- *Delduco v. Boykin Lodging Company*  
Case No. CV-06-59403 (Cuyahoga Co., Ohio)
- *Official Committee of Unsecured Creditors (Baldwin Piano & Organ Co) v. Karen Hendricks*

No. 1:04-CV-66 (S.D. Ohio)

- *In Re Fannie Mae Securities Litigation*  
MDL-1688, Consolidated Civil Action No. 1:04-CV-1639 (D.C.)
- *In Re Mutual Funds Investment Litigation*  
MDL-1586, Lead Case No. 04-md-15863 (D. Maryland)
- *Ohio Public Employers Retirement System v. Federal Loan Mortgage Corp.*  
MDL-1584, Lead Case No. 03-CV-4261 (S.D. New York)
- *Smith v. Robert M. Ginn (Centerior Power Co.*  
Case No. 046065 (Cuyahoga Co., Ohio)
- *IT Litigation Trust v. D'Aniello*  
No. 02-10118 (Del.)
- *Austern Trust v. Peter H. Forster (Dayton Power & Light)*  
No. A-02-07067 (Hamilton Co., Ohio)
- *Steiner, et al. v. Figgie International, Inc.*  
No. 1:94 Civ. 0805 (N.D. Ohio)
- *Adelman v. Meadowbrook Rehabilitation Group*  
No. C-93-0561-CAL (N.D. California)
- *In re Penn Central Corporation Derivative Shareholders Litigation*  
Case No. A-90-09331 (Hamilton Co., Ohio)
- *In re Dayco Corporation Derivative Securities Litigation*  
No. C-3-82-254 (S.D. Ohio)

### **Products Liability and Consumer Class Action Litigation**

- *Combs v. Crown Life Insurance Company*  
No. 1:07-CV-00151 (S.D. Ohio)
- *Crail v. Best Buy Co., Inc.*  
No. 2:06-CV-227 (E.D. Kentucky)
- *Cowit v. Celleo Partnership d/b/a Verizon Wireless*  
Case No. A-05-05869 (Hamilton Co., Ohio)
- *Academy of Medicine of Cincinnati v. Aetna Health, Inc.*  
Case No. A-02-04947 (Hamilton Co., Ohio)

- *Woodward, et al. v. Great American Life Insurance Company*  
Case No. A-99-0587 (Hamilton Co., Ohio)
- *Sulzer Orthopedics Inc. Hip Prosthesis and Knee Prosthesis Products Liability Litigation*  
No. 1-CV-9000, MDL-1401 (N.D. Ohio)
- *In Re: Electronics Pacing Systems, Inc. Accufix Atrial "J" Leads Products Liability Litigation*  
MDL-1057 (S.D. Ohio)
- *In Re: Community Mutual Co-Payment Litigation*  
No. C-1-94-428 (S.D. Ohio)
- *Wojtkiewicz v. Blue Cross & Blue Shield Mutual of Ohio, Inc.*  
Case No. 254993 (Cuyahoga Co., Ohio)
- *In re Silicon Gel Breast Implant Prod. Liability Litigation*  
MDL-926 (N.D. Alabama)
- *Imberman v. Harbour Towne Yacht Club Condominiums*  
Case No. A-88-03801 (Hamilton Co., Ohio)

## The Strauss Troy Complex Litigation Practice Group

### Partners/Shareholders

**Richard S. Wayne** is a member of the Board of Directors of Strauss Troy, Co-Chairman of its Litigation Department, and has been a member of the bar since 1979. He is a member of the Cincinnati, Ohio State, Federal and American Bar Associations. For more than 30 years, Mr. Wayne has specialized in the area of securities and corporate litigation, product liability and consumer fraud litigation, including complex multi-district litigation. He is admitted to the United States District Courts for the Southern District of Ohio and the Eastern District of Michigan, and to the United States Court of Appeals for the Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits. Mr. Wayne has been an arbitrator for the NASD and the American Arbitration Association. Mr. Wayne has been a member of the United States District Court for the Southern District of Ohio Merit Selection Committee for Magistrate Judges. He has been a lecturer at the annual Ohio Securities Conference, sponsored by the Ohio Division of Securities, the Cleveland Bar Association Annual Private Securities Litigation Reform Act seminar, and has presented/lectured on the following: Plaintiff Perspectives in Class Action Litigation (October 2000); Directors and Officers – Fiduciary Duties at the Midwest Regional Bankruptcy Seminar (2002); Law on Corporations, guest instructor at the University of Dayton School of Law; *The Future of D&O Litigation – What is the Next Hot Issue?* at the AON Risk Management Seminar

(2006); *The Principles and Policies of Aggregate Litigation: CAFA, PSLRA, and Beyond*, at the 24<sup>th</sup> Annual Corporation Law Center Symposium, University of Cincinnati College of Law (Panelist, April 2011).

Mr. Wayne has also represented public corporations, officers and directors of public corporations, insurance companies, brokerage firms, shareholders of public corporations in a variety of commercial litigation, and individuals against both public and private corporations.

Mr. Wayne is a graduate of the University of Dayton School of Law. While in law school, Mr. Wayne was Case Counsel for the Moot Court program and an Associate Editor of the University of Dayton Law Review. He also published the following article in the University of Dayton Law Review: *Environmental Law Case Work for Administratively Imposed Civil Money Penalties in the Enforcement of Policy Objectives*, 3 U.Day.L.Rev. 153 (Winter, 1978).

In addition to the cases listed above, Mr. Wayne was lead counsel *In Re: Eagle-Picher Industries, Inc. Securities Litigation*, Master File No. No. C-1-88-936 (S.D. Ohio) (Spiegel, J.), in which Judge Spiegel stated that:

Plaintiffs' primary counsel are nationally known leaders in the field of securities class actions. The quality and efficiency of their representation is beyond reproach. (Slip op. at 7)

In the *Community Mutual Co-Payment Litigation*, in which Mr. Wayne served as lead counsel for plaintiffs, U.S. District Court Judge Beckwith and Judge O'Connor stated that:

The high caliber of Class Counsel is well reflected in the affidavits submitted by each individual attorney involved in the prosecution of this litigation. Each attorney has established a national reputation for management of complex class actions. Each attorney enjoys the respect of the bench and bar for his or her ability to efficiently pursue class claims and secure substantial benefits for the class.

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These cases often present difficult and complex factual scenarios, as well as legal issues of first impression. They cannot be lightly undertaken by inexperienced counsel nor by law firms unprepared to significant expenses of litigation over long periods of time. Both Class Counsel and their law firms are to be commended for their dedication to this case and the others that they have championed.

**R. Guy Taft** is Co-Chairman of Strauss Troy's Litigation Department and practices in Federal and State Court litigation and appeals. Primary areas of litigation are in breach of contract, fraud, commercial, corporate, partnership, and shareholder disputes, unlawful competition, patent and trademark infringement, non-compete agreements, employer/employee disputes, ERISA insurance, health care, product liability and personal injury. He has been a partner at Strauss Troy from 1989 to present; formerly partner/associate at Steer, Strauss, White & Tobias from 1976 to 1988. Mr. Taft has served as lead trial counsel in litigation of the above law specialties since 1982, and has handled numerous jury trials, trials to the court, arbitrations, and mediations in federal and state courts, as well as arbitrations for the American Arbitration Association. He was admitted to practice in Ohio and Federal Courts in 1976. He is a member of the following professional associations: ABA (Business Law and Litigation Committees); Ohio Bar Association; Cincinnati Bar Association: Board of Trustees 1996-2000, Chairman of Community Services Committee 1996-1998; Cincinnati Bar Foundation Board of Trustees 1999-2000; Federal Bar Association; American and Ohio Trial Lawyers Associations. Mr. Taft is a graduate of the University of Cincinnati (BA-72; JD-76).

**William K. Flynn** is a member of the Board of Directors of Strauss Troy, Co-Chair of the Litigation Department and leads the Financial Services Sub-Group. He is a graduate of Miami University of Ohio and the University of Cincinnati Taft College of Law (1985), where he was selected to compete in the National Moot Court Competition and won the National Administrative Law Competition and Best Brief Award. Mr. Flynn's litigation practice includes business, employment, commercial, and investor claims in state and federal courts, including extensive experience in class action and other multi-party complex lawsuits involving claims for violations of state and federal securities laws, business torts and other anti-fraud violations, control shareholder, officer and director and financial fiduciary violations involving both public and private companies. Mr. Flynn has considerable specific experience representing individual investors, advisors, retail brokers and other fiduciaries involving financial services industry disputes, particularly in the prosecution and defense of claims for fraud, professional negligence and breach of duty claims, as well as industry related employment disputes and state and certain federal regulatory and enforcement by the SEC and Ohio Division of Securities. Mr. Flynn is admitted to practice in Ohio and Kentucky, the United States District Courts for the Southern and Northern Districts of Ohio, the Western District of Kentucky, the United States Court of Appeals for the Sixth Circuit, and is a member of the Federal, Ohio, Kentucky, Cincinnati and Public Investor Arbitration Bar Associations.

**Joseph J. Braun** is a member of the Board of Directors of Strauss Troy and the firm's Litigation Department, with an emphasis in commercial and complex litigation (involving shareholder, product liability and other consumer issues), constitutional law, employment discrimination and general business law. Mr. Braun is admitted to practice in Ohio, the United States District Court for the Southern District of Ohio, the Northern District of Ohio and the United States Court of Appeals for the Sixth and Eleventh Circuits. Mr. Braun is a member of the Cincinnati, Ohio State and American Bar Associations, as well as the American and Ohio Trial Lawyers Associations. Mr. Braun graduated from the

University of Kentucky (B.A. 1995) and the University of Toledo College of Law (1998). He also serves as the City Solicitor and Mayor's Court Prosecutor for the City of Loveland, Law Director for Miami Township, Clermont County, Ohio, Solicitor of the Village of Georgetown, Ohio and Law Director of the City.

**Matthew W. Fellerhoff** is a member of the Strauss Troy Litigation and Real Estate Departments. He focuses on complex litigation, advocating for clients in private and public controversies. Matt joined Strauss Troy after serving as a Municipal Court Judge in Hamilton County, Ohio. Prior to his public service, he practiced law for 16 years and established himself as a leader in the areas of litigation, complex land use matters, local government, eminent domain, property rights and employment law. He served as long-time law director for the Villages of Moscow and Woodlawn, Ohio and has represented numerous other units of local government in Ohio, assisting in employment matters, annexations and constitutional issues. Mr. Fellerhoff has extensive experience in property rights matters, including inverse condemnation suits, land use and zoning proceedings, eminent domain and real estate development. He has successfully tried numerous eminent domain "right to take" cases on behalf of property owners, preventing local agencies from taking their property. He further has extensive experience in eminent domain valuation cases. He has participated in and litigated local and federal environmental and historic preservation matters. Mr. Fellerhoff has represented numerous property owners, developers, community groups and others in actions before local zoning boards and subsequently in court on issues of zoning approvals, variances and special exemptions related to the use of property.

He is admitted to practice in the State of Ohio, the United States District Court for the Southern District of Ohio and the United States Court of Appeals for the Sixth Circuit. He has also handled matters in other states, including Kentucky and Indiana. He is a member of the American, Ohio and Cincinnati Bar Associations.

**Ron Parry** is a member of Strauss Troy's Litigation Department. He graduated from Western Kentucky University (B.S. 1970) and the University of Tennessee Law School (J.D. 1972). Mr. Parry is licensed to practice law in Kentucky, Ohio and Iowa. He is a member of the Kentucky and Ohio Bar Associations, the American Bar Association, the American Association for Justice (formerly the American Trial Lawyers Association), the Kentucky Justice Association, and a Master of the Bench in the Potter Stewart Inn of Court in the Southern District of Ohio. He has previously served as a member of the Board of Governors of the Kentucky Justice Association (formerly the Kentucky Academy of Trial Attorneys) and as President and Treasurer of the Kentucky Chapter of the American Board of Trial Advocates (ABOTA). At the time Mr. Parry was selected as a member of ABOTA, he had to demonstrate that he had tried to conclusion more than 50 civil and criminal jury trials.

Mr. Parry's practice is primarily in the field of complex litigation. He has handled a substantial number of class actions for investors, life insurance policyholders, auto

insurance claimants and other consumers. He also has experience in mass tort cases involving medical devices and pharmaceutical products.

Mr. Parry was appointed to the Executive Committee for Plaintiffs' Counsel in *In re The Prudential Insurance Co. of America Sales Practices Litigation*, 962 F. Supp. 572, 585-586 (D.N.J. 1997). In approving a \$2 billion settlement of a nationwide class action against a life insurer for deceptive sales practices, Judge Wolin observed:

[T]he results achieved by plaintiffs' counsel in this case in the face of significant legal, factual and logistical obstacles and formidable opposing counsel, are nothing short of remarkable.

\* \* \*

Finally, the standing and professional skill of plaintiffs' counsel, in particular Co-Lead Counsel, is high and undoubtedly furthered by their ability to negotiate a valuable settlement and argue its merits before this Court. Several members of plaintiffs' counsel are leading attorneys in the area of class action litigation.

At the Fairness Hearing, Judge Wolin stated that "there is no doubt that Class Counsel have prosecuted the interests of the class members with the utmost vigor and expertise." *In re The Prudential Insurance Co. of America Sales Practices Litigation*, 962 F. Supp. 450, 519 (D.N.J. 1997).

Mr. Parry is admitted to practice before the United States District Courts for the Eastern and Western Districts of Kentucky, the Southern District of Ohio, and the United States Court of Appeals for the Sixth, Ninth and Eleventh Circuits. He has also received pro hac vice admission to practice before numerous State and Federal Courts throughout the country.

Mr. Parry has lectured at seminars presented by the Kentucky Justice Association, the American Conference Institute and SeminarWeb on the subject of class actions, the Class Action Fairness Act and ethical issues presented in class actions.

**Robert R. Sparks** is a member of the Strauss Troy Litigation Department and concentrates his practice in civil trial and appellate practice in the areas of consumer class actions, consumer fraud, investment fraud, insurance litigation, insurance brokerage matters, and shareholder derivative and investor claims. Mr. Sparks has represented people harmed by fraud and unscrupulous business practices in state and federal courts throughout the United States. Claims in these cases typically include consumer protection, unfair and deceptive practices, misrepresentation, breach of contract and fraud. This experience includes:

- Co-lead counsel in federal court in Texas representing a class of life insurance policy owners challenging an insurer's attempt to increase cost of insurance charges in the life insurance contract. This litigation resulted in a multi-million dollar settlement for the class.
- Representing elderly investors in a multi-million dollar Ponzi scheme involving the sale of life insurance as an investment.
- Representing about 70 investors in a \$100 million real estate Ponzi scheme which involved litigation and mediation in state court, federal court and in private arbitration. The representation also included negotiations with state and federal regulators investigating the Ponzi scheme. Part of the representation included obtaining a favorable award after a two-week arbitration for 20 investors against a major regional bank.
- Representing people harmed when an insurance company changed the benefit definition in a supplemental insurance policy in an attempt to reduce benefits to policy owners and save millions of dollars for the insurance company.
- Representing investors in FINRA arbitrations against their broker, brokerage firm, and insurers.
- Representing individuals and classes against mortgage lenders and servicers for predatory lending practices, unfair and improper fees and charges, and breach of contract.

Mr. Sparks has worked on over a dozen complex, nationwide insurance class actions involving deceptive sales practices and fraud such as "vanishing premiums," "churning," and the sale of life insurance as an investment.

Mr. Sparks is also a trial attorney. He has obtained favorable verdicts and arbitration awards in a variety of cases involving insurance, personal injury, investment fraud, and consumer protection.

He graduated *magna cum laude* from Northern Kentucky University, Salmon P. Chase College of Law. While there, Mr. Sparks was a member of the Northern Kentucky Law Review and inducted into the Order of the Curia. Mr. Sparks is a member of the Kentucky Justice Association, the American Association for Justice, and the National Association of Consumer Advocates.

Mr. Sparks is admitted to practice in the courts of Kentucky and Ohio and before the United States District Courts for the Eastern and Western Districts of Kentucky, Southern District of Ohio, Eastern District of Wisconsin, and the United States Court of Appeals for the Sixth Circuit. He has also received pro hac vice admission to practice before numerous State and Federal Courts throughout the country.

**Emily T. Supinger** is a member of the Strauss Troy Litigation Department.

Her practice focuses on civil litigation, property rights, zoning and land use planning, eminent domain, municipal law and employment law. Emily has represented political subdivisions, locally and across Ohio, in a variety of matters, including zoning disputes and eminent domain cases. She currently serves as the law director for the City of Wyoming and the Village of Woodlawn (both in Hamilton County), and for the Village of Moscow and the Village of Bethel, Ohio (both in Clermont County). As a law director, Ms. Supinger deals with all aspects of government representation and governance, including public records and open meetings, contracts, real estate, zoning and economic development issues, elections law and referendum, as well as employment and personnel matters.

Ms. Supinger has extensive experience in eminent domain matters and has successfully challenged the government's "right to take" property on behalf of property owners, thereby preventing government agencies from acquiring their property. She has also represented public agencies in acquiring property for public projects. Her creative and thoughtful approach in such matters has resulted in expeditious and fair results for the parties involved.

**Stephen E. Schilling** is a member of Strauss Troy's Litigation Department.

Prior to joining Strauss Troy, he served as a law clerk to the Honorable Michael R. Barrett, Federal District Judge, Southern District of Ohio. Mr. Schilling's practice involves various aspects of state and federal litigation with an emphasis on commercial and complex litigation. He is admitted to practice in Ohio and the United States District Courts for the Southern District of Ohio, and he is a member of the Ohio State Bar Association and the Cincinnati and Dayton Bar Associations. Mr. Schilling is a magna cum laude graduate of the University of Dayton School of Law, where he was the Managing Publication Editor of the University of Dayton Law Review. He has published numerous law-review articles on a variety of subjects.

**Amy L. Hunt** is a member of the Strauss Troy Litigation Department, where she concentrates her practice in the areas of complex litigation, including consumer class actions, insurance litigation and financial products. Ms. Hunt's practice involves various aspects of state and federal litigation, with an emphasis on commercial and complex litigation. She has represented consumers in cases against large property and life casualty insurance carriers involved in deceptive practices and improper claims handling practices. Ms. Hunt is admitted to practice in Ohio and the United States District Courts for the Southern District of Ohio. She is a member of the Ohio State Bar Association and the Cincinnati Bar Association.

**Of Counsel**

**Philomena S. Ashdown** practices in the areas of bankruptcy (Chapter 11 and workouts), UCC and general commercial law, banking, and debtor-creditor law and

financial and commercial litigation. Mrs. Ashdown is admitted to practice in Ohio, the United States District Court for the Southern District of Ohio, the United States District Court for the Northern District of Ohio (including Bankruptcy Courts), the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit. She was the co-founder and the first President of Commercial Real Estate Women, Inc. of Greater Cincinnati (CREW); the former President of the Greater Cincinnati Women Lawyer's Association; the former President and current member of the TriState Association for Corporate Recovery; and a member of the Board of Catholic Charities of Southwestern Ohio, former Board President. She currently serves on the Bankruptcy Committee of the Cincinnati Bar Association, its CARE subcommittee (Co-Chair of the Judicial Liaison Sub-Committee). Mrs. Ashdown is a graduate of the University of Madras (Stella Maris College) (B.Sc. 1978), the University of Madras Law College (LL.B. 1984), and the University of Notre Dame Law School (J.D. 1986).

## **Associates**

**Jeffrey A. Levine** is a member of Strauss Troy's Litigation and Corporate Departments. Mr. Levine's primary practice involves all aspects of state and federal civil litigation, as well as corporate law, including entity formations and acquisitions. Prior to joining Strauss Troy, he served as a law clerk to Hamilton County Common Pleas Judge Jody M. Luebbers. Mr. Levine is a Cincinnati native and a graduate of the University of Cincinnati College of Law, where he served on the Moot Court Executive Board and received membership to the Order of the Barristers. Mr. Levine has published numerous articles on a variety of subjects, including the legal risks associated with the use of social media. He is admitted to practice in Ohio and the United States District Court for the Southern District of Ohio.

**R. Austin Stevenson** focuses his practice on general corporate and business law, litigation, labor and employment, and real estate. Originally from Wheelersburg, Ohio, he earned his bachelor's degree in Political Science from NKU and his law degree from University of Kentucky College of Law. While at the University of Kentucky, Austin was a member of the Kentucky Law Journal, chairman of the UK Federalist Society, and secretary of the UK Christian Legal Society. Austin serves on the Northern Kentucky Young Alumni Council.



July 25, 2022

**DWORKEN & BERNSTEIN Co., L.P.A.**

Dworken & Bernstein is a 25-attorney firm in practice for more than half-century, providing simple and complex representations to individuals, business and government. The firm is staffed with approximately 60 professional and administrative staff, employing respected and successful attorneys in complex litigation, corporate, banking, business, serious injury, class and collective actions and other areas.

The firm's class and collective action practice is nationally recognized, through representation of more than 500,000 individuals, firms and small businesses as class members in cases throughout the U.S. These cases involve misconduct in the field of banking, insurance, telecommunications, investments, real estate, government programs and a host of others, resulting in more than \$1 billion in settlements or recoveries for class members. The hallmark of this practice has been handling cases rejected by other firms. Success on these matters was achieved through creative litigation, including successfully demanding changes in law. The team relies on its AV-rated attorneys, certified specialists, and respected litigators ranked in the top 75 Trial Lawyers in the U.S.

The head of the department, Patrick J. Perotti (Cleveland-Marshall, Magna Cum Laude, 1982) is an award-winning national leader in the fields of consumer class actions, employment discrimination, and wage and hour litigation. With verdicts and settlements exceeding \$1 billion dollars, Mr. Perotti is regularly selected to lead class suits in Ohio and around the country. His reputation developed from a demand for outcomes which not only offered compensation to class members but also stopped unlawful government and corporate practices. That is, deterrence for future misconduct. Using the class action device to achieve deterrence, these efforts have opposed settlements which do not properly disgorge unlawful profits from wrongdoers. These efforts have also directed more than \$50 million in unclaimed class funds from settlements to charities and non-profits around the country through court approved *cy pres*.

The bench, bar and community have recognized Mr. Perotti's legal and community accomplishments with the National Trial Lawyers Top 100 Award, the defense bar's Top 75 Plaintiff Trial Lawyers in the United States, the Ohio State Bar Association's highest honor, the Ritter Award, and his alma mater Marshall College of Law's highest honor, the Alumnae of the Year Award. As a frequent lecturer at state and national conferences on class actions, employment law, and the *cy pres* doctrine, Mr. Perotti is regularly consulted by the bench, bar and media on those subjects.

His cases typically involve extremely complex legal and discovery issues, against mega-entities such as Facebook, AT&T, Fannie Mae, Fitbit, State of Ohio BWC, and others. He has a reputation of extreme fairness, impartiality and professionalism in working with opposing counsel, co-counsel, and the court. His simple motto for everything is, "Do the right thing." His work as class counsel is consistently described by courts as "Exceptional representation for the class members. Taking into consideration the complexity of the legal issues at hand and the result achieved by Class Counsel, it is clear to the Court that the legal representation in this case was superb."



### Some Representative Sample Class and Collective Actions:

Case Name	Court
Asset Acceptance v. Caszatt	Lake County Court of Common Pleas
Brickman v. Fitbit, Inc.	U.S. District Court, Northern District of California; U.S. Court of Appeals, 9 <sup>th</sup> Circuit
Brickman v. Maximus, Inc. et al	U.S. District Court, Southern District of Ohio
Brickman v. Meta Platforms, Inc. (Facebook)	U.S. Court of Appeals, 9th Circuit
Cantlin v. Smythe Cramer Co.	Lake County Court of Common Pleas
Conley v. The Kroger Company	U.S. District Court, Southern District of Ohio
Cranfield v. State Farm Fire and Casualty Company	U.S. District Court, Northern District of Ohio
Dilthey v. First Community Credit Union	Circuit Court of St. Louis County, MO
Eighmey v. City of Cleveland	Ohio Court of Appeals, 8 <sup>th</sup> District
Ferguson-Luke v. Allstate Property & Casualty Insurance Company	U.S. District Court, Northern District of Ohio
Fox et al v. American Family Insurance Company	U.S. District Court, Northern District of Ohio
Gallagher v. Santander Consumer USA Inc.	U.S. District Court, Eastern District of MO
Gault v. Clerk of Courts, Medina County, et al.	Ohio Court of Appeals, 7th District
Hughes v. Portage County, Ohio	Ohio Court of Appeals, 11th District
Hurt, et al v. Commerce Energy, Inc., et al	U.S. District Court, Northern District of Ohio
Koz v. Village of Newburgh Heights	Cuyahoga County Court of Common Pleas
Lado v. Allstate Vehicle and Property Insurance Company	U.S. District Court, Northern District of Ohio
Lycan, et al. v. City of Cleveland	Supreme Court of Ohio; Ohio Court of Appeals, 8 <sup>th</sup> District.
Maniaci v. Allstate Insurance Company	U.S. District Court, Northern District of Ohio
Monaco v. WV Parkways Authority	U.S. Court of Appeals, 4th Circuit
Musial Offices, Ltd. v. County of Cuyahoga	Cuyahoga County Court of Common Pleas; Ohio Court of Appeals, 8 <sup>th</sup> District, Ohio Supreme Court



Painter v. Woodstream Corporation	U.S. Court of Appeals, 6th Circuit, U.S. District Court, Northern District of Ohio
Papp v. Cuyahoga County,	Cuyahoga County Court of Common Pleas
Patterson v. United Healthcare Insurance Company, et al.	U.S. Court of Appeals, 6th Circuit
Perry v. Allstate Indemnity Company et al.	U.S. Court of Appeals, 6 <sup>th</sup> Circuit, U.S. District Court, Northern District of Ohio
Pivonka v. Maureen Corcoran, Director of Ohio Department of Medicaid	Cuyahoga County Court of Common Pleas; Ohio Court of Appeals, 8 <sup>th</sup> District, Ohio Supreme Court
Radatz v. Federal National Mortgage Association (Fannie Mae)	Cuyahoga County Court of Common Pleas; U.S. District Court, Northern District of Ohio; Ohio Court of Appeals, 8 <sup>th</sup> District; Ohio Supreme Court
San Allen, Inc., et al. v. Sarah Morrison, Administrator, Ohio Bureau of Workers' Compensation	Cuyahoga County Court of Common Pleas; Ohio Court of Appeals, 8 <sup>th</sup> District; Ohio Supreme Court
Schmidt v. AT&T, and SBC Internet Services, Inc., dba AT&T Internet Services	Cuyahoga County Court of Common Pleas; U.S. District Court, Northern District of Ohio; Ohio Court of Appeals, 8 <sup>th</sup> District
Sherman, et al. v Ohio Public Employees Retirement System	Franklin County Court of Common Pleas; Ohio Court of Appeals, 10 <sup>th</sup> District, Ohio Supreme Court
Valentine v. Cedar Fair, LP	Ohio Supreme Court; Ohio Court of Appeals, 6 <sup>th</sup> District, Erie County Court of Common Pleas

Mr. Perotti is the founder of the firm's Ohio Lawyers Give Back initiative. In recent years, this effort advocated for the use of *cy pres* to direct unclaimed class action funds to charities. These unique efforts, with court approval, have directed over \$50 million dollars to more than 300 charities and non-profits. *See*, [www.ohiolawyersgiveback.org](http://www.ohiolawyersgiveback.org).